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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,201	11/26/2003	Hermann Wahl	(E) 1854 US	9040
7590 12/30/2005			EXAMINER	
M. Robert Kestenbaum 11011 Bermuda Dunes NE Albuquerque, NM 87111			BASICHAS, ALFRED	
			ART UNIT	PAPER NUMBER
			3749	
DATE MAILED: 12/30/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Tah

Office Action Summary	Application No. 10/723,201	Applicant(s) WAHL ET AL.	
	Examiner Alfred Basichas	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/26/03, 04/16/04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the heating arrangement of claim 8 and the vehicle heating device must be shown or the features canceled from the claims. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-7 are rejected under 35 U.S.C. 102(a) or (e) as being anticipated by Hermann (6,709,264), which shows all of the claimed limitations. Hermann shows a combustion chamber subassembly including, among other things, a housing with a housing wall, a fuel feed (10) through the housing wall, a fuel distribution channel arrangement (9), a fuel distribution element (6) covering the housing wall (20) on a side facing toward a combustion chamber and which, together with the housing wall (see at least fig. 1), bounds the fuel distribution channel arrangement (9), and a plurality of fuel inlet apertures (8) in the fuel distribution element (6) that conducts fuel from the fuel distribution channel arrangement (9) toward the combustion chamber (see at least col. 3, lines 45-50), further comprising a groove-like recess (9) in at least one of the housing wall (see at least fig. 1) and the fuel distribution element (6) for forming the fuel

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distribution channel arrangement (9), wherein the fuel feed (10) includes at least one fuel feed aperture (10) in the housing wall (see at least fig. 1) opening into the fuel distribution channel arrangement (9), and wherein the at least one fuel feed aperture (10) is offset with respect to the fuel inlet apertures (8), wherein the at least one fuel feed aperture (10) opens into the fuel distribution channel arrangement (9) in a region between two of the plurality of fuel inlet apertures (8), further comprising an evaporator medium (12), that receives fuel from the fuel inlet apertures (8) on a side (32) of the fuel distribution element (6) facing toward the combustion chamber (see at least col. 3, lines 45-50), wherein the housing (12) comprises a pot, comprising a floor (20) and an annular peripheral wall (see at least fig. 1), and the fuel distribution element (6) is of annular form and at least regionally covers the peripheral wall (see at least fig. 1) of the housing (12), wherein at least one combustion air inlet aperture (16) is formed on a region of the peripheral wall (see at least fig. 1) not covered by the fuel distribution element (6). Applicants are advised that the mention of the heating device is given little or no patentable weight.

Claim Rejections - 35 USC § 102/103

4. Claims 1-5, 8, and 9 are rejected under 35 U.S.C. 102(b) as anticipated by DE10120027, DE4003090, and DE9210028 as applied in applicant's international application EP03013202.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 8 and 9, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Hermann (6,709,264), which discloses substantially all of the claimed limitations. Hermann does not specifically recite the use of its device in a vehicle

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heater. Nevertheless, the intended use of an apparatus does not constitute patentable subject matter in an apparatus claim. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the device of Herman into a vehicle heater, because it is within the general skill of one of ordinary skill in the art to select a known structure on the basis of its suitability for the intended use.

Prior Art

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The reference discloses a combustion device with many, if not all, of the claimed components. Nevertheless, in order to avoid overburdening the applicant with redundant rejections, these references were not applied.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Basichas whose telephone number is 571 272 4871. The examiner can normally be reached on Monday through Friday during regular business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 571 272 4828. The fax phone numbers for the organization where this application or proceeding is assigned are 703 872 9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center telephone number is 571 272 3700.

December 22, 2005


Alfred Basicas
Primary Examiner